

## REMARKS

### I. Status of the Claims

Claims 1-5, 7-8, 10-21, and 23-24 are pending in this application. Claims 1, 17, 20, 23, and 24 are in independent form. Claims 6, 9, 22 and 25-27 have been cancelled. The amendments above merely incorporate subject matter from formerly dependent claims or make certain purely cosmetic changes. Specifically, as amended, all of the independent claims recite a hard candy confectionery product comprising a salivation region and an oral comfort region, in which the salivation agent in the salivation region is an acidulent. Claim 25 setting forth that limitation has been canceled. No new matter has been added. As no new issues requiring further search and/or consideration are raised, Applicants respectfully request entry of the present amendments and reconsideration of the outstanding rejections for the reasons set forth below.

### II. Rejection Under 35 U.S.C. § 102

Claims 1-3, 6-8, 10, 15-18 and 20-25 were rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent 6,231,900 (“Hanke”).

Claim 1 requires an acidulent concentrated in the salivation region. This is not the case in Hanke. The Office Action says that “composition B [in Hanke] reads on the instant salivation region” (page 3). The Examiner is also apparently aware that “citric acid is taught in both composition A and B” (page 4). However, there is half as much citric acid in composition B as in composition A (see col. 10 in Hanke). Therefore, in Hanke, the acidulent is not concentrated in the salivation region. To the contrary, it is concentrated in what the Examiner regards as the oral comfort region. The Office Action observes that “[t]he claims are open ended and the acidulent is required in only one

region but may be in both” (page 4). This completely misses the point that the acidulent must be concentrated in the salivation region. This argument was made in applicants’ last response, and earlier in the prosecution of this application (when Hanke was initially applied against the claims, and later that rejection was withdrawn), and further in an interview with the Examiner. Careful reconsideration of this point is respectfully requested in view of the foregoing.

To the extent that the examiner considers the menthol in composition B of Hanke to read on the claimed salivation agent, menthol is not an acidulent, and is therefore not within the scope of the salivation agent as presently claimed. Accordingly, since Hanke does not disclose all the elements of the claimed invention, it is respectfully submitted that there is no anticipation.

### III. Rejection Under 35 U.S.C. § 103

The Examiner has applied Hanke in a new rejection of claims 1-8, 10-11, 15-18 and 20-25, under 35 U.S.C. 103. The Examiner allows that the “flavor” in Composition A in column 10 in Hanke may not be “orange oil” as hypothesized in the rejection under 35 U.S.C. § 102.<sup>1</sup> In the rejection under section 103, the Examiner suggests that it would have been obvious to select an orange oil as the flavor. It is implied that it would have been obvious, had such orange oil flavor been selected, that it would serve as the claimed oral comfort ingredient.

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<sup>1</sup> In the section 102 rejection, the Examiner surmises that because orange oil is a lipid, it functions as an oral comfort agent.

Of course, the rejection under section 103 does not overcome the deficiency noted above, namely that the acidulent is concentrated in the opposite region from the one that the Examiner says is the salivation region.

Moreover, the Office Action does not offer any reason why, if the flavor happens to be a lipid, it would have been obvious to use it in an amount effective to lubricate, coat or moisten an oral cavity, as presently claimed, rather than as a flavorant, as disclosed in the reference. The flavorant disclosed in Hanke is preferably present in an amount of 0.4 percent to about 1.5 percent (col. 7, line 26). Surely, it is not obvious from that disclosure that a lipid present in a range of 1 to about 20 percent (as in claim 11) has an oral comfort effect. It is one thing to select a flavorant that happens to be a lipid. It is quite another to select a lipid in an amount effective to lubricate, coat or moisten an oral cavity, as claimed. Applicants respectfully request reconsideration of the obviousness arguments on the further grounds that Hanke does not disclose or make obvious the oral comfort activity presently claimed.

The secondary reference, Klacik, applied in combination with Hanke against claim 19, does not overcome the deficiencies of Hanke. Specifically, Klacik does not teach concentrating an acidulent in a salivation region. Reconsideration of that rejection is also requested.

Claims 1-6, 8, 10-14, 17, 20 and 22-24 were rejected under 35 U.S.C. § 103 as allegedly being obvious over 5,286,659 (“Cherukuri”).

The Examiner alleges that the “shell” region of Cherukuri “reads on instant ‘salivation region’ since this region contains ‘copper gluconate which reads on salt and flavor.’” (See Office Action, page 8) However, the claims have been amended to

limit the salivation agent to acidulents, which excludes copper gluconate. Cherukuri does not disclose a salivation region having an acidulent concentrated therein.

Again, as with Hanke, there is no disclosure whatsoever in Cherukuri of the claimed salivation and oral comfort effects of the ingredients claimed, and no disclosure of a composition that causes manipulation of the candy in an oral cavity. In sum, for all of the foregoing reasons, Cherukuri neither anticipates nor renders obvious the claimed invention.

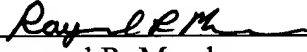
#### CONCLUSION

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

This Amendment After Final Action is believed clearly to place this application in condition for allowance and its entry is therefore believed proper under 37 C.F.R. § 1.116. Entry of this Amendment After Final Action, as an earnest effort to advance prosecution and reduce the number of issues, is respectfully requested. Should the Examiner believe that issues remain outstanding, the Examiner is respectfully requested to contact Applicants' undersigned attorney in an effort to resolve such issues and advance the case to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

  
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